

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:)	
)	
FITNESS MANAGEMENT GROUP,)	Case No. 09-31863
INC., ET AL.,)	
)	(Chapter 11)
)	
Debtor.)	

MOTION OF BOULEVARD INVESTMENT PROPERTIES, LLC TO ALLOW AND
COMPEL IMMEDIATE PAYMENT OF POST-PETITION RENTS

NOW COMES Boulevard Investment Properties, LLC ("Boulevard"), by and through counsel, pursuant to 11 U.S.C. § 365(d)(3) and 503(b) and respectfully requests the Court to allow and compel the immediate payment of post-petition rents and in support of thereof shows unto the Court the following:

1. On July 10, 2009, Fitness Management Group, Inc. ("Fitness") filed for relief under Chapter 11, Title 11 of the United States Bankruptcy Code.
2. On March 16, 2010, the Court entered a Final Order confirming Amended Chapter 11 Plan of Liquidation which set forth, amongst other things, that creditors had sixty (60) days from the entry of said Order in which to file administrative expense claims.
3. Boulevard is a landlord pursuant to a commercial real estate lease dated September 19, 2006 between Boulevard and Peak Fitness XI, LLC for premises consisting of approximately 30 square feet located at 3900 Durham-Chapel Hill Boulevard, Durham, North Carolina (the "Lease"). A true and accurate copy of the Lease is attached hereto and incorporated herein by reference as Exhibit "A".
4. Boulevard filed a Proof of Claim on November 11, 2009 in the amount of \$184,568.23. The claim includes \$28,277.91 for July of 2009, which should be bifurcated to include an administrative expense claim for the period July 10, 2009 through July 31, 2009 in the amount of \$20,068.19.
5. The Debtor has occupied the premises during the pendency of the bankruptcy proceeding and has paid post-petition except for the bifurcated portion of July 2009 rent due.
6. Pursuant to the Debtor's Confirmed Plan of Liquidation, the lease has been rejected.

7. Under 11 U.S.C. § 365(d)(3), the “trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title.” The Debtor has failed to comply with Section 365(d)(3) in that it has not paid for post-petition amounts due for July of 2009.

8. The total amount of rent due for July of 2009 is \$28,277.91. As such, the pro rata amount due for the post-petition amount of July \$20,068.19.

9. Boulevard is entitled to an Order allowing the \$20,068.19 of post-petition rent as an administrative expense under Section 365(b)(3), and ordering the Debtor to immediately pay said rent due.

10. In addition, Boulevard is entitled to an Order allowing \$20,068.19 as an administrative expense under Section 503(b) as costs of preserving the estate.

WHEREFORE, it is respectfully requested the Court allow the sum of \$20,068.19 in post-petition rent as an administrative expense under Sections 365(d)(3) and 503(b) of the Bankruptcy Code and order the Debtor to immediately pay the sum of \$19,156.00 pursuant to Section 365(d)(3).

THIS the 26th day of March, 2010.

s/Dirk W. Siegmund

Dirk W. Siegmund

NCSB #20796

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NOTICE OF HEARING

Boulevard Investment Properties, LLC, through undersigned counsel, has filed a Motion to Allow and Compel Immediate Payment of Post-Petition Rents.

YOUR RIGHTS MAY BE AFFECTED. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult with one.)

If you do not want the Court to allow the relief sought in the motion or objection, or if you want the Court to consider your views on the Motion or Objection, then on or before April 13, 2010, you or your attorney may:

- 1) File with the Court a written response (an answer explaining your position) at:

United States Bankruptcy Court
Western District of North Carolina
Charlotte Division
P.O. Box 34189
Charlotte, NC 28234-4189

If you mail your response to the Court for filing, you must mail it early enough so that the Court will **receive** it on or before the date states above.

- 2) If you file a response, you must mail a copy to:

Dirk W. Siegmund
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100 S. Elm Street, Suite 500
Greensboro, NC 28204-2826

Bankruptcy Administrator
402 West Trade Street
Charlotte, NC 28202

3) A hearing will be held on **April 14, 2010 at 9:30 a.m.**, United States Bankruptcy Court, 401 West Trade Street, Suite 200, Charlotte, North Carolina.

All interested parties may attend and be heard. (If you do not oppose this Motion/Objection, you do not have to attend).

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Dated: March 26, 2010

s/Dirk W. Siegmund

Dirk W. Siegmund

NCSB #20796

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 26, 2010 copies of the foregoing Motion to Allow and Compel Immediate Payment of Post-Petition Rents and Notice of Hearing were served via ECF or via US Mail as follows:

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This the 26th day of March, 2010.

s/ Dirk W. Siegmund

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NCSB #20796

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